

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
)	
Chehalis Power Generating, LP)	
)	Docket No. CAA-10-2001-0095
Chehalis Generating Facility,)	
Chehalis, Washington)	ADMINISTRATIVE ORDER
)	ON CONSENT
Respondent.)	
)	

ADMINISTRATIVE ORDER ON CONSENT

WHEREAS, the United States Environmental Protection Agency (“EPA”) and the Washington Energy Facility Site Evaluation Council (“EFSEC”) issued a Prevention of Significant Deterioration (“PSD”) permit to Chehalis Power Generating, LP (“Chehalis Power”) on June 18, 1997, for the purpose of constructing the Chehalis Generation facility (“Chehalis Facility”) to be located in Chehalis, Washington;

WHEREAS, the PSD permit for the Chehalis Facility allowed for the installation of certain equipment, including two General Electric “F” frame 159-megawatt (“MW”) combustion turbines;

WHEREAS, on December 18, 1998, EPA and EFSEC granted an 18-month extension of the PSD permit issued to the Chehalis Facility;

WHEREAS, on January 20, 2000, Chehalis Power applied to EFSEC for revisions to the PSD permit and Site Certification Agreement previously entered into by Chehalis Power and EFSEC for the construction and operation of the Chehalis Facility;

WHEREAS, the January 20, 2000, application to revise the PSD permit included a request to install General Electric “7FA” frame 175-MW turbines;

WHEREAS, EPA and Chehalis Power disagree over whether Chehalis Power commenced construction of the Chehalis Facility as permitted by the original PSD permit, before that permit’s expiration date;

WHEREAS, under the federal PSD regulations found at 40 C.F.R. § 52.21(b) through (w), which have been incorporated into the Washington State Implementation Plan (“SIP”) at 40 C.F.R. § 52.2497(b), no major stationary source may begin actual construction without a valid PSD permit which states that the source meets the requirements of 40 C.F.R. § 52.21(j) through (r);

WHEREAS, pursuant to 40 C.F.R. § 52.21(u), EPA has delegated to EFSEC partial responsibility for administering federal PSD regulations;

WHEREAS, under the EFSEC regulations for air permit applications (Washington Administrative Code (“WAC”) 463-42-385) and Washington Department of Ecology (“Ecology”) regulations for new source review (WAC ch. 173-400), an owner or operator must file a notice of construction application and obtain an approval order and PSD permit prior to beginning actual construction on a major stationary source;

WHEREAS, construction of the Chehalis Facility will constitute construction of a major stationary source under the previously mentioned federal, state and EFSEC regulations;

WHEREAS, the PSD permit extended on December 18, 1998, for the Chehalis Facility requires the installation of Best Available Control Technology (“BACT”) which was determined for NO_x to be a combination of advanced dry-low NO_x combustor technology;

WHEREAS, Chehalis Power has agreed to install selective catalytic reduction (“SCR”) in addition to dry-low NO_x combustor technology to control NO_x emissions prior to commencing commercial operation of the Chehalis Facility;

WHEREAS, EPA believes that no air pollution standards will be exceeded, and no harm to the environment will occur if Chehalis Power begins actual construction of the Chehalis Facility prior to receiving a revised PSD permit;

WHEREAS, the Governor of Washington signed a Proclamation on January 26, 2001, finding that vital public services, particularly affordable electrical power, are at risk and there exists a situation that threatens to disrupt or diminish the supply of energy to the extent that the public health, safety, and general welfare may be jeopardized, and declared an energy supply alert within the State of Washington;

WHEREAS, on March 6, 2001, the Governor of Washington signed the “Amended Site Certification Agreement Between the State of Washington and Chehalis Power Generating, Limited Partnership for the Chehalis Generating Facility”;

WHEREAS, EPA and Chehalis Power (“Party” in the singular and “Parties” in the plural) agree that in order to avoid protracted litigation and to assist in avoiding future energy generation shortfalls in Washington State, this Order is in the public interest;

NOW, THEREFORE, the Parties agree that:

I. Authority to Issue Order

1. EPA has the authority to enter into this Order pursuant to Section 167 of the Clean Air Act, 42 U.S.C. § 7477.

II. Applicability and Binding Effect

2. This Order shall apply to and be binding upon EPA and Chehalis Power, and its successors and assigns, and its officers, directors, agents, servants, and employees in their capacities as such, assignees and delegatees, and all other persons and entities as provided for in Fed. R. Civ. P. 65(d).

3. From the Effective Date of this Order, until its Termination Date, Chehalis Power shall give written notice and a copy of this Order to any successors in interest at least thirty (30) days before transferring ownership of any portion of or interest in the Chehalis Facility, or any assignment of rights concerning, or delegation of duties relating to, any of the operations of the Chehalis Facility, provided, however, that the obligations imposed by this paragraph 3 do not apply to a delegation of duties relating to the marketing and or sale of the capacity and/or energy of the Chehalis Facility. Chehalis Power shall condition any transfer, in whole or in part, of ownership of, operation of, or other interest in the Chehalis Facility upon a binding written commitment to fully and

successfully execute the terms and conditions of this Order. Simultaneously with such notice, Chehalis Power shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Chehalis Power shall not be released from the obligations or liabilities of this Order unless EPA has provided written approval of the release of said obligations or liabilities.

III. Definitions

4. Unless otherwise expressly provided herein, terms used in this Order shall have the meaning given to those terms in the Clean Air Act, and the regulations promulgated thereunder, and the Washington SIP and the regulations promulgated thereunder. In addition, the following definitions apply within this Order:

“BACT” means the Best Available Control Technology, as defined by Section 169(3) of the Clean Air Act, 40 C.F.R. § 52.21(b)(12), and WAC 173-400-030(10) as incorporated into the Washington SIP;

“Chehalis Power” means Chehalis Power Generating, LP, its successors and assigns, and its officers, directors, agents, servants, and employees in their capacities as such;

“Commence commercial operation” shall have the same meaning as that term is given under 40 C.F.R. § 72.2, which is to have begun to generate electricity for sale, including the sale of test generation;

“Effective Date” means the latter date, if any, of signature by the Parties;

“Order” means this Administrative Order on Consent;

“Parties” means EPA and Chehalis Power.

IV. Terms and Conditions

5. Chehalis Power shall request a PSD permit revision requiring the installation and operation of SCR by the Chehalis Facility to control NO_x emissions, and with the following enforceable emissions limits for the combustion turbine: 3.0 parts per million by volume dry (“ppmdv”) for NO_x when firing natural gas; 14 ppmdv for NO_x when firing oil; and 10 ppm for ammonia. The Parties shall each exercise all due diligence and good faith to promptly conclude this PSD permit revision.

6. Chehalis Power may not commence commercial operation of the Chehalis Facility prior to obtaining the above PSD permit revision and installing SCR; but Chehalis Power may begin and commence actual construction after the Effective Date of this Order before the revised PSD permit is issued.

7. EPA hereby reserves its rights to be present during any and all emissions testing conducted at the Chehalis Facility. Accordingly, Chehalis Power shall provide EPA advance written notice of the dates of its proposed testing. The advance written notice shall be received by EPA no less than three business days prior to testing. If EPA chooses not to attend such testing after receiving due notice, EPA’s absence shall not be considered to be a failure of performance by Chehalis Power under this Order; provided, however, that EPA reserves its rights to review and use all data from emissions tests conducted at the Chehalis Facility whether or not EPA attends such tests.

V. Effect of this Administrative Order

8. Compliance with the terms of this Order resolves any liability that Chehalis Power may have for beginning actual construction of the Chehalis Facility prior to obtaining a PSD permit. Compliance with this Order does not resolve Chehalis Power's liability for any violations unrelated to these particular PSD requirements.

9. The Parties each agree not to dispute before the Environmental Appeals Board, in a court of law, or otherwise, whether the Chehalis Facility's original PSD permit is still in effect, provided, however, that either Party may raise all relevant defenses, in response to claims raised by third parties challenging this Order or Chehalis Power's operation of the Chehalis Facility, or address this issue in proceedings involving other facilities.

10. The Parties reserve all other rights and remedies, legal and equitable, to enforce the provisions of this Order.

11. Nothing in this Order shall be construed to limit EPA's power to undertake any action against Chehalis Power or any other person in response to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.

12. Except as specifically provided in the Order, this Order is neither a permit, license, authorization, nor a modification of existing permits under any federal, state, or local law, and in no way relieves Chehalis Power of its responsibilities to comply with all

applicable federal, state, and local laws and regulations, including but not limited to all existing permits.

13. Consistent with the provisions of this Order, EPA also reserves all rights to review, comment on, and object to any draft or proposed PSD permit regarding the Chehalis Facility.

VI. General Provisions

14. Any modification of this Order shall be by agreement of the Parties and in writing and shall not take effect until the written agreement is signed by both Parties.

15. This Order shall be effective upon the latter date, if any, of signature by the Parties. Signature by each Party on any copy of the Order shall constitute signature of the Order for determining the effective date.

16. Unless this Order states otherwise, whenever this Order requires written notice to be given, or a report or other document to be sent by one Party to another, it shall be directed to the individual contacts at the addresses specified below in paragraph 17, unless a Party representative gives notice of a change of contact or address to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

17. The following contacts and addresses shall be used for notices and submissions required by this Order:

As to U.S. EPA:

Daniel Meyer
Office of Air Quality
EPA Region 10, OAQ-107
1200 Sixth Avenue
Seattle, WA 98101

As to Chehalis Power:

Traci R. Hampton, P.E.
Director, Environmental Engineering
C/o Tractebel Power, Inc.
1177 West Loup South
Houston, TX 77027

VII. Termination of this Order

18. This Order shall terminate upon: (1) issuance of a final revised PSD permit requiring installation and operation of SCR consistent with paragraph 5 of this Order, or (2) failure or refusal of EFSEC to sign the PSD permit revision described in paragraph 5 above.

19. Notwithstanding paragraph 18 above, this Order shall terminate, after notice by EPA, if any of the following occurs: (1) Chehalis Power does not comply with the material provisions of this Order; or (2) an imminent and substantial endangerment to public health, welfare, or the environment has occurred which EPA believes requires termination of this Order. This Order terminates immediately upon receipt by Chehalis Power of the notice of termination.

VIII. Survival of Terms

20. Paragraphs 8, 9, 11 and 13 of this Order shall survive the termination of this Order, unless EPA terminates the Order under paragraph 19, in which case the Parties will retain the legal rights and responsibilities as they stood prior to the Effective Date of this Order.

IX. Signatories

21. The undersigned representatives of EPA and Chehalis Power each certify that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the respective Parties to this Order.

Date: March 22, 2001

_____/s/_____
Charles E. Findley
Acting Regional Administrator
EPA, Region 10

Date: _____

_____/s/_____
Paul J. Cavicchi
Vice-President
Chehalis Power Generating, LP